TELEPHONE COMPANY—RIGHT TO USE PUBLIC HIGHWAY.—The plaintiff sought to enjoin the defendant company from erecting and maintaining telephone poles on the highway adjacent to his farm. These poles were being placed near the hedge, separating the farm from the highway in such manner, as to hinder the plaintiff in trimming the hedge or cutting the grass along the highway. No condemnation proceedings had been instituted, nor had plaintiff's consent been obtained. *Held,* the erection and maintainance of a telephone line is not such use of highway as to entitle plaintiff to relief. *McCann* v. *Johnson County Telephone Co.* (1904), — Kans. —, 76 Pac. Rep. 870.

The court was divided,—four to three. The controlling opinion is to the effect that the purpose of a highway—the main question here—is not limited to the use of such methods of travel and communication only, as existed in the first days of highways, or even at the time of the acquisition of any particular easement, but, includes the use of all modern methods, such as the telegraph and telephone. The main requirement is that the public benefit be not decreased. Numerous authorities are cited. See *Cater* v. *Northwestern Telephone Exchange Co.,* 60 Minn. 539; *Julia Building Association* v. *Bell Telephone Co.,* 88 Mo. 258; *People* v. *Eaton,* 100 Mich. 208; *Hershfield* v. *Telephone Co.,* 12 Mont. 102; *Magee* v. *Overshiner,* 150 Ind. 127. The dissenting opinion is to the effect that anything which "exclusively and continuously occupies" the highway, as a telephone pole, is a new use. A distinction is also attempted between the extent of the easement in a city street and a rural highway. See *Eels* v. *Telephone Co.,* 143 N. Y. 133; *Barnett* v. *Telegraph Co.,* 107 Ill. 507; *Eaton* v. *Telegraph Co.,* 170 Ill. 513; 2 DILLON MUNICIPAL CORPORATIONS, § 698 a. The weight of authority seems to be with the majority of the court, the tendency of recent decisions being to do away with the distinction between city streets and rural highways as to the extent of the servitude. This is due mainly to the extension of city facilities into the country.

TORT—NEGLIGENCE—PROXIMATE CAUSE.—Defendants, wholesale dealers in bananas, had a storehouse located at the corner of two business streets. The sidewalk at the side of their store was, during business hours, so covered with barrels, boxes and bunches of bananas that passersby were excluded from use of all the sidewalk except a narrow passageway, usually littered with hay and loose bananas. Plaintiff passing through this narrow way, stepped on a banana and fell, receiving injuries for which this action is brought. *Held,* defendants are responsible for reasonably safe condition of the passageway to which they wrongfully restricted passersby, and were liable for plaintiff's injuries. *Garibaldi et al.* v. *O'Connor* (1904), — Ill. —, 71 N. E. Rep. 379.

The main issue was whether defendants were charged with the duty of keeping in a safe condition the portion of sidewalk where plaintiff was walking. Abutters on public streets may use the sidewalks for purposes of unloading and handling goods, but such use must be temporary and reasonable. The public right of passage is always prior and superior. Evidence here showed a substantially permanent unreasonable use, and the court decided

that a legal duty devolved upon defendants to keep the passage reasonably safe. A like conclusion was reached and the same duty declared obligatory in *Murphy* v. *Leggett,* 164 N. Y. 121, 58 N. E. 42. Reasonable use is a question of fact depending on its temporary and necessary nature. *Callanan* v. *Gilman,* 107 N. Y. 360. Use of a sidewalk amounting to a nuisance, constitutes a proximate cause of an injury resulting therefrom. *Cohen* v. *Mayor,* 113 N. Y. 532. It was not necessary to prove that the banana came upon the sidewalk by acts of defendants. 21 AM. & ENG. ENCY. OF LAW, 2nd Ed., 492. When the intervening cause can be reasonably anticipated, the earlier negligent act, if contributing to the injuries may be regarded as the proximate cause. *Armour* v. *Golkowska,* 202 Ill. 144, 21 AM. & ENG. ENCY. OF LAW, 2nd Ed. 491.

TRUST—CERTAINTY OF LANGUAGE.—Where a testator devised all his estate to his wife, with the condition that there was to be applied to her own use a designated portion of the income, and so much of the residue, "As to her may seem proper, to be allowed to the assistance of" certain relatives of the testator. *Held,* (two justices dissenting) a valid trust was created, which, upon the failure of the donee to execute, would be administered in equity. *Prince* v. *Barrow* (1904), — Ga. —, 48 S. E. Rep. 412.

That no particular words are necessary to create a trust, seems clear; and the authorities are abundant to the effect, that where the donee is not to have the sole beneficial interest in the property, a trust is raised which equity will enforce. 28 AM. & ENG. ENC. LAW 666b; 2 POMEROY EQ. JUR., Sec. 1016; *Gordon* v. *Green,* 10 Ga. 534; *Norman* v. *Burnett,* 25 Miss. 183; *Jackson* v. *Fisher,* 10 Johns. 456; *Morse* v. *Morse,* 85 N. Y. 53. The difficulty lies in determining what is the intention of the donor in a particular case, and that this involves questions of no little perplexity is aptly illustrated in the principal case, by the entirely different views entertained by the minority of the court from those expressed by the majority, regarding the same instrument. In the following cases the language has been held sufficient to indicate an intention that a trust be established. *Phillips* v. *Phillips,* 112 N. Y. 197, 19 N. E 411; *Maxwell* v. *Hoppie,* 70 Ga. 152; *Bailey* v. *Kilburn,* 51 Mass. 176, 43 Am. Dec. 423. In *Lawrence* v. *Cook,* 104 N. Y. 632, holding, under a similar statement of facts to that given above, that no trust was raised, briefs collecting a large number of cases on each side of the question are given. See also *In re Gardner,* 140 N. Y. 122, 35 N. E. 439.

WAREHOUSEMEN—GOODS STORED IN PLACE DIFFERENT FROM THAT OF CONTRACT—WHEN LIABLE FOR LOSS.—The plaintiff made a contract with defendant whereby the latter was to store goods for plaintiff at a certain place. The plaintiff took out a policy of insurance upon the goods as being at the place where defendant had contracted to store them; but of this action, defendant was not notified. The goods were stored not at the place agreed upon, but in a different building controlled by defendant. While in this building, the goods, without any negligence on the part of defendant, were destroyed by fire. Plaintiff sued to recover on the theory that defendant had broken the bailment contract and exposed plaintiff's property to a risk not contemplated